



Steven W. Troxler  
Commissioner

North Carolina Department of Agriculture  
and Consumer Services  
*Veterinary Division*

Christina L. Waggett  
Assistant Commissioner  
for Consumer Protection

Douglas Meckes, DVM  
State Veterinarian

August 25, 2021

Tyson Rogers  
Owner  
Abstract Canine  
5700 Cohn Eaker Road  
Cherryville, North Carolina 28201

**NOTICE of CIVIL PENALTY**

**Re: CIVIL PENALTY ASSESSMENT for VIOLATION of N.C. GENERAL STATUTE § 19A-28**

**AWS-CP-2021-16**

**Facility: Abstract Canine  
Unlicensed**

Dear Mr. Rogers:

Pursuant to NCGS § 19A-40, I am issuing this notice that you, as owner of Abstract Canine, are hereby assessed a civil penalty of \$2,500.00 as provided in the enclosed Notice of Violations.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N.C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to NCGS § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

### **PAYMENT**

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services  
Dr. Patricia Norris  
Director, Animal Welfare Section  
1030 Mail Service Center  
Raleigh, NC 27699-1030

### **APPEAL**

If you file a contested case petition, it must be in writing and in the form prescribed by NCGS § 150B-23. The petition must be filed with the N.C. Office of Administrative Hearings ("OAH") within 60 days from the date of this document. Additionally, the petition must be accompanied by a filing fee of twenty dollars (\$20.00). Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone at 919-431-3000.

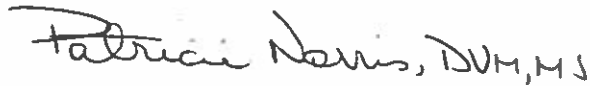
You must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlabse  
North Carolina Department of Agriculture and Consumer Services  
Registered Agent and General Counsel  
1001 Mail Service Center  
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Norris, DVM, MS". The signature is written in dark ink and is positioned above the printed name and title.

Patricia Norris, DVM, MS  
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: Michael Martin, DVM, State Veterinarian;  
Tina Hlabse, General Counsel, NCDA&CS;  
Christina L. Waggett, Assistant Commissioner, NCDA&CS;  
Christopher R. McLennan, Assistant Attorney General

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT  
OF AGRICULTURE AND CONSUMER  
SERVICES, VETERINARY DIVISION  
ANIMAL WELFARE SECTION

IN THE MATTER OF  
TYSON ROGERS  
OWNER OF  
ABSTRACT CANINE

) NOTICE OF VIOLATION and  
) ASSESSMENT of CIVIL PENALTY  
) for VIOLATION of N.C. GENERAL  
) STATUTE ("NCGS") § 19A-28  
)

Acting pursuant to NCGS § 19A-40, Dr. Patricia Norris, Director, Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") makes the following:

**FINDINGS OF FACT**

1. At no time pertinent to this matter was Abstract Canine, (the "kennel"), which was offering to the public the service of boarding dogs for a fee, licensed pursuant to N.C.G.S. § 19A-28.
2. On August 5, 2021, AWS received a complaint alleging that this facility was an unlicensed boarding kennel and that a young adult dog, named Finley, died while boarding at the facility. Based on the information in the complaint, AWS opened an investigation.
3. A review of the information in the complaint revealed the following:
  - a. Finley and Koda were left at the kennel for boarding on July 24, 2021;
  - b. on July 29, 2021, the dogs' owners received a text requesting they call the kennel due to an emergency with Koda;
  - c. the dogs' owner spoke with the kennel owner, Mr. Rogers, who told him that Koda was playing in the yard and had a seizure and that 2 veterinarians had been called to the kennel to assist in the treatment of Koda;
  - d. a few minutes later the kennel owner relayed to the dogs' owner that the veterinarian(s) was/were attempting to resuscitate Koda;
  - e. approximately 10 minutes later, the kennel owner relayed to the dogs' owner that Koda had passed away. Approximately 20 minutes later, the kennel owner relayed to the dogs' owner that he was taking the body to a veterinary hospital;
  - f. the dogs' owner requested the veterinary hospital hold Koda until they could say goodbye before sending him for a necropsy;
  - g. as the dogs' owners were out of town, they requested that a relative pick up Finley from the kennel. The relative then took the dog to the owner's house. When the owners arrived home, they discovered that the kennel had misidentified the dogs, so that it was actually Finley that had died, not Koda;
4. As part of the investigation, the AWS Inspector conducted an unannounced site visit to the kennel on August 12, 2021. This site visit revealed the following:
  - a. multiple kennels were present with inside enclosures, measuring approximately 4 ft x 6 ft, that were connected to small, covered outdoor porches. The inside enclosures did not have any ventilation or mechanism for heating or cooling. The only ventilation was through the small door to the outside porch area;
  - b. the kennel charges \$60.00 per day for boarding only and \$90.00 per day for boarding with

- training;
- c. when asked about the events of July 29, 2021, the kennel owner relayed that he trained the dog from 6:00 – 6:45 AM and then left the facility. A staff member found the dog deceased in the kennel at approximately 1:15 PM. The kennel owner returned to the kennel at approximately 2:00 PM. The kennel owner took the body to the veterinary hospital at approximately 4:00 PM;
  - d. the AWS Inspector asked about the 2 veterinarians that reportedly attempted to resuscitate the dog, the kennel owner revealed that there were no veterinarians were present at the kennel and no resuscitation or first aid efforts were attempted;
  - e. the AWS Inspector asked the kennel owner if he was aware of the high temperature for July 29, 2021 for that area. The kennel owner said no. The Inspector informed him it was approximately 95°F. The Inspector asked if the inside enclosure where the dog was housed was air-conditioned. The kennel owner replied that the kennel has 6 air-conditioned enclosures, but the deceased dog was not housed in one of the air-conditioned enclosures;
  - f. when asked when did the kennel owner realize that he had mixed up the identification of the dogs, he replied that he did not know until he spoke with the veterinary hospital the following day. The kennel owner admitted that he never relayed this information to the dogs' owners.
5. The AWS Inspector obtained Finley's medical records from the attending veterinarian's hospital. A review of the medical records revealed:
- a. Finley presented deceased on arrival at the clinic;
  - b. Finley's body temperature was 95.7°F;
  - c. A gross examination of the body showed Finley was in rigor mortis; did not reveal an obvious cause of death; and the hair coat was dry but appeared to have been recently wetted;
  - d. the veterinarian spoke with the diagnostic laboratory performing the necropsy and noted in the record that the decomposition was advanced enough to possibly interfere with the ability to get a definitive cause of death and that it was suspected that the time of death occurred much earlier than reported.
6. A review of the necropsy report for Finley revealed that a definitive cause of death could not be determined due to the advanced decomposition of the body.
7. A review of AWS records show that Abstract Canine has not submitted an application for a boarding kennel license as of the date of this Notice of Civil Penalty.

## CONCLUSIONS

As a result of this investigation, AWS concludes that the kennel, either by act or omission, violated the following provisions:

NCGS §19A-28 for operating a boarding kennel without obtaining a license granted by the AWS Director to operate such an establishment.

In addition, AWS finds that the dog named Finley died while in the care and custody of this unlicensed boarding kennel while being housed in an enclosure that was in violation of the Title 2 NC Administration Code Section 52J .0202(a) which requires that indoor housing facilities to be adequately heated and cooled when necessary to protect the animals from cold and excessive heat and provide for their health and comfort.

## CIVIL PENALTY

As required by N.C. General Statute § 19A-40, in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly, Tyson Rogers, as owner of Abstract Canine, is hereby assessed a civil penalty for the following violations:

\$2,500.00 for violation of NCGS § 19A-28 for operating a boarding kennel without obtaining a license granted by the AWS Director to operate such an establishment

**\$2,500.00 TOTAL AMOUNT ASSESSED**

Continued or future violation of the statutes or regulations referenced in this letter will be considered a willful disregard or violation of the N.C. Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in action against your facility's license pursuant to NCGS § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under NCGS § 19A-40.

In addition, operation of a boarding kennel without a currently valid license is a Class 3 misdemeanor under NCGS 19A-33 and each day constitutes a separate offense.

(See Appendix for text of referenced General Statutes and Administrative Code)

August 25, 2021  
Date

Patricia Norris, DVM, MS  
Patricia Norris, DVM, MS  
Director, Animal Welfare Section  
North Carolina Department of Agriculture & Consumer Services

## Appendix

### REFERENCED LAWS AND REGULATIONS

#### **§ 19A-28. License required for public auction or boarding kennel.**

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be seventy-five dollars (\$75.00) for each license period or part thereof beginning with the first day of the fiscal year.

#### **§ 19A-30. Refusal, suspension or revocation of certificate or license.**

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the

violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect.

**§ 19A-33. Penalty for operation of pet shop, kennel or auction without license.**

Operation of a pet shop, kennel, or public auction without a currently valid license shall constitute a Class 3 misdemeanor subject only to a penalty of not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00), and each day of operation shall constitute a separate offense.

**§ 19A-40. Civil Penalties.**

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

**02 NCAC 52J .0202      INDOOR FACILITIES**

(a) Indoor housing facilities for dogs and cats shall be adequately heated and cooled when necessary to protect the dogs and cats from cold and excessive heat and provide for their health and comfort. The ambient temperature shall not be allowed to fall below 50 degrees F. or exceed 85 degrees F. \*

*History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.*